In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 877

RILEY LEON HUGHES, PETITIONER

v.

J. HERMAN GENGLER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

In this action brought against the Postmaster of the United States Post Office at Marysville, California, petitioner seeks to recover three cents "postage due" which he, as an addressee, paid "under protest." An air mail, special delivery letter, with stamps totaling only 35 cents affixed,[1] was mailed to petitioner, addressed to his post office box number in Marysville. When it was received at the Post Office it was indorsed "Postage Due 3 Cents" and a notice was placed in petitioner's box informing him that the letter could be picked up at the General Delivery Window on payment of the three cents. Two or three days

[1] The proper amount was 38 cents—30 cents special delivery fee and 8 cents air mail postage.

later, petitioner called at the window. After complaining that he was not getting special delivery service and that the postage was, therefore, more than sufficient, he paid the three cents "under protest."

This action, seeking recovery of the three cents plus personal costs,[2] was originally filed in the Yuba County, California, Small Claims Court. Pursuant to 28 U.S.C. 1442(a)(1), respondent removed the action to the United States District Court for the Eastern District of California. Finding that petitioner had voluntarily paid the postage due (Pet. App. 12) the district court entered judgment against him. On appeal, the court of appeals declined to rest on its conclusion that affirmance would be warranted on *de minimis* grounds (Pet. App. 1), and went on to determine that under the applicable statutes and regulations the respondent postmaster had acted properly in requiring payment of the postage due before delivering the letter (Pet. App. 1–7). On October 2, 1968, judgment was rendered against petitioner, with costs.

Quite apart from the fact that this is in effect an unconsented suit against the United States, and that petitioner has failed to exhaust his administrative remedies (see 39 U.S.C. 4055; 39 C.F.R. (1966 rev.) 37.2), the carefully detailed opinion of the court below demon-

[2] The *ad damnum* clause was later limited to the three cents paid to respondent.

strates that respondent fully complied with the applicable regulations and that petitioner's claim is without merit.

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

FEBRUARY 1969.

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